

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 348 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ABHAYSINH NARANSINH GADHVI

Versus

STATE OF GUJARAT & OTHERS

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Appearance:

MR HARDIK RAVAL for the petitioner

MR NN PANDYA for the respondents.

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/08/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner entered in the Government service of the State of Gujarat as Armed constable in the Police Department in the year 1955. The counsel for the petitioner admits that during the pendency of this Special Civil Application the petitioner retired from the services on 30th November, 1991 on attaining the age of superannuation. The challenge is made by the petitioner in this Special Civil Application to the supersession

which has been made in the year 1975 in the matter of his promotion to the post of Head Constable Gr.II. The petitioner had been promoted in the year 1981 as Head Constable Gr.II. The counsel for the petitioner contended that the supersession of the petitioner was arbitrary as there was no adversity whatsoever against him in his service record. The petitioner has come up with a case that from the date of his appointment till today, the petitioner has untarnished and unblemished service career. The petitioner further states that there is not a single dark spot in his service career. The petitioner on affirmation has made a statement that neither of the respondents will be able to point out a single instance against the petitioner, may it be a minor or major where a finger could be pointed towards the petitioner.

2. The respondents have filed reply to this Special Civil Application. A copy of this reply was given to the counsel for the petitioner on 6-7-1984. The petitioner has not filed any rejoinder to the reply, and as such, the averments made therein have not been controverted by him. In reply, the respondents have come up with a case that the petitioner has been awarded four minor punishments during the period from 1969 to 1975. The sheet remarks for the period from 1969 to 1975 have also been given. Though the counsel for the petitioner has tried to give out that there were no adverse remarks in any of the aforesaid years, but I find that in the year 1970 there were adverse remarks against the petitioner. So far as the year 1972 and 1975 are concerned, the petitioner was reported to have 'Not Yet'. Both the counsels for the petitioner and respondents are unable to give out what this word 'Not Yet' denotes. The counsel for the petitioner is unable to say how there were no adverse remarks for the year 1972 and 1975.

3. It is not a case where the petitioner's case was not considered for promotion. The case of the petitioner was considered for promotion, but he was not found fit by the departmental promotion committee as there were adverse remarks and penalties in his service record. This court will not sit as an Appellate authority above the decision of the departmental promotion committee. The petitioner's case was again considered for the promotion in the next year, but again he was not found suitable.

4. Leaving apart that the petitioner has no case whatsoever on the merits, yet there are two other reasons on which this writ petition deserves to be dismissed.

The petitioner has concealed from this court the material fact that he had been punished departmentally four times. Not only he has concealed this fact, but on the contrary, he made deliberately wrong statement of the fact. The averments made in the reply of the writ petition have not been controverted for all these years. This writ petition deserves to be dismissed on the ground of concealment of material fact as well as deliberately making false statement.

5. The delay normally after admission may not be taken into consideration for dismissal of the Special Civil Application, but in the matter of seniority as well as deemed date of promotion, it may assume importance and the delay has to be considered strictly. The petitioner has not challenged the promotions which have been made of his juniors for all these years. In case the prayer of the petitioner is accepted then it will affect the seniority of those juniors who have been promoted in this intervening period. The promotions of the juniors has not been challenged and they have also not been impleaded as party in this Special Civil Application. Any relief as prayed for in this Special Civil Application is granted in favour of the petitioner, then it will cause prejudice to the persons who had already been promoted to the post of Head Constable Gr. II and to the next higher post of Head Constable Gr.I.

6. Taking into consideration the totality of the facts of the case, no interference is called for and this writ petition deserves to be dismissed. Order accordingly. This Special Civil Application is dismissed. Rule discharged. No order as to costs.

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